

SENATE BILL

No. 28

Introduced by Senator Sher

February 5, 2001

An act to add Section 42301.15 to, and to add Chapter 7 (commencing with Section 39910) to Part 2 of Division 26 of, the Health and Safety Code, and to amend Sections 25506, 25514, 25523, 25531, and 25552 of, to add Sections 25526.1 and 25544 to, and to add and repeal Section 25550.5 of, the Public Resources Code, relating to energy resources, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as introduced, Sher. Powerplant siting.

(1) Existing law contains various provisions relative to air pollution control.

This bill would require the State Air Resources Board, in consultation with air districts and the State Energy Resources Conservation and Development Commission, to implement a program for the expedited retrofit of electrical generating facilities to ensure that the facilities are permitted to operate in a manner that complies with law. The bill also would require the state board to implement a program for the identification of emission reduction credits for electrical generating facilities and make that information available to the public and interested parties.

The bill would require each air pollution control district or air quality management district to adopt an expedited program for the permitting of standby electrical generation facilities and distributed generation facilities and an expedited program for the air pollution retrofit of

existing electrical generation facilities, thereby imposing a state-mandated local program.

(2) Existing law provides for the restructuring of California's electric power industry so that the price for the generation of electricity is determined by a competitive market.

Existing law requires the State Energy Resources Conservation and Development Commission to certify all sites and related facilities for thermal powerplants in the state, including a new site and related facility or a change or addition to an existing facility. The commission is required to prepare a final report and written decision after a public hearing on the application for the powerplant.

Existing law requires the commission to request the appropriate local, regional, state, and federal agencies to make comments and recommendations about the design, operation, and location of facilities.

This bill would require a local jurisdiction, as defined, to file a preliminary list of issues regarding the design, operation, location, and financial impact of the facility with the commission within 45 days of the filing of the application for certification. The bill would require the local jurisdiction to provide a final list of those issues within 90 days. To the extent that the bill would require the local jurisdiction to provide a new program or higher level of service, it would impose a state-mandated local program.

This bill would require the final report prepared by the commission to additionally include findings and conclusions as to whether increased property taxes due to the construction of the project are sufficient to support needed local improvements and public services required to serve the project.

This bill would require the written decision prepared by the commission after the public hearing to include a discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits, resulting from modernization of the state's electric generation infrastructure.

This bill would require the commission to adopt a regulation governing ex parte contacts applicable to an adjudicatory proceeding, as specified.

This bill would clarify that decisions of the commission are subject to judicial review by the Supreme Court of California.



The bill would specify that no owner of a facility has standing to challenge a decision made by the commission unless the owner also owns transmission or fueling facilities adjacent to the facility.

(3) Existing law authorizes the commission to establish a process for the expedited review of applications to construct and operate powerplants and thermal powerplants and related facilities.

This bill would require the commission, until January 1, 2004, also to establish a process for the expedited review of a repowering project.

This bill would additionally delete the deadline for completed applications for an expedited decision on simple cycle thermal powerplants.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 7 (commencing with Section 39910) is
2 added to Part 2 of Division 26 of the Health and Safety Code, to
3 read:

4

5 CHAPTER 7. EXPEDITED AIR QUALITY IMPROVEMENT PROGRAM
6 FOR ELECTRICAL GENERATION

7

8 39910. The Legislature finds and declares that it is in the
9 interests of the people of the State of California to ensure that the
10 state board establish an expedited process to assist in the

1 permitting, retrofit, and operation of electrical generating
2 facilities in a manner that protects public health and air quality.

3 39915. The state board, in consultation with the districts and
4 the State Energy Resources Conservation and Development
5 Commission, shall implement a program for the expedited retrofit
6 of electrical generating facilities to ensure that those facilities
7 operate, by permit, in a manner that complies with applicable
8 statutes and regulations.

9 39920. The state board shall implement a program for the
10 identification of emission reduction credits for electrical
11 generating facilities and make that information available to the
12 public and interested parties.

13 SEC. 2. Section 42301.15 is added to the Health and Safety
14 Code, to read:

15 42301.15. (a) Each district shall adopt an expedited program
16 for the permitting of standby electrical generation facilities and
17 distributed generation facilities which ensures that those facilities
18 may operate in compliance with applicable air quality standards,
19 statutes, and regulations.

20 (b) Each district shall adopt an expedited program for the
21 retrofit of existing electrical generation facilities so that those
22 facilities may operate in compliance with applicable air quality
23 standards, statutes, and regulations. Each district shall consult with
24 the Independent System Operator, the Public Utilities
25 Commission, and the State Energy Resources Conservation and
26 Development Commission to ensure that the program is
27 coordinated with efforts to ensure electrical grid reliability.

28 SEC. 3. Section 25506 of the Public Resources Code is
29 amended to read:

30 25506. (a) The commission shall request the appropriate
31 local, regional, state, and federal agencies to make comments and
32 recommendations regarding the design, operation, and location of
33 the facilities designated in the notice, in relation to environmental
34 quality, public health and safety, and other factors on which they
35 may have expertise.

36 (b) *Each local jurisdiction responding to the request shall file*
37 *a preliminary list of issues regarding the design, operation,*
38 *location, and financial impacts of the facility with the commission*
39 *no later than 45 days after the filing of an application for*
40 *certification and shall provide a final list of those issues with the*

1 *commission no later than 90 days after the filing of an application*
2 *for certification.*

3 (c) *“Local jurisdiction,” for purposes of this section, means*
4 *any city, county, city and county, or regional planning agency, or*
5 *any combination thereof formed for the joint exercise of any power.*

6 SEC. 4. Section 25514 of the Public Resources Code is
7 amended to read:

8 25514. After conclusion of the hearings held pursuant to
9 Section 25513 and no later than 300 days after the filing of the
10 notice, a final report shall be prepared and distributed. The final
11 report shall include, but not be limited to, all of the following:

12 (a) The findings and conclusions of the commission regarding
13 the conformity of alternative sites and related facilities designated
14 in the notice or considered in the notice of intention proceeding
15 with both of the following:

16 (1) The 12-year forecast of statewide and service area electric
17 power demands adopted pursuant to subdivision (e) of Section
18 25305, except as provided in Section 25514.5.

19 (2) Applicable local, regional, state, and federal standards,
20 ordinances, and laws, including any long-range land use plans or
21 guidelines adopted by the state or by any local or regional planning
22 agency, which would be applicable but for the exclusive authority
23 of the commission to certify sites and related facilities; and the
24 standards adopted by the commission pursuant to Section 25216.3.

25 (b) Any findings and comments submitted by the California
26 Coastal Commission pursuant to Section 25507 and subdivision
27 (d) of Section 30413.

28 (c) Any findings and comments submitted by the San Francisco
29 Bay Conservation and Development Commission pursuant to
30 Section 25507 of this code and subdivision (d) of Section 66645
31 of the Government Code.

32 (d) The commission’s findings on the acceptability and relative
33 merit of each alternative siting proposal designated in the notice
34 or presented at the hearings and reviewed by the commission. The
35 specific findings of relative merit shall be made pursuant to
36 Sections 25502 to 25516, inclusive. In its findings on any
37 alternative siting proposal, the commission may specify
38 modification in the design, construction, location, or other
39 conditions which will meet the standards, policies, and guidelines
40 established by the commission.

(e) Findings and conclusions with respect to the safety and reliability of the facility or facilities at each of the sites designated in the notice, as determined by the commission pursuant to Section 25511, and any conditions, modifications, or criteria proposed for any site and related facility proposal resulting from the findings and conclusions.

(f) *Findings and conclusions as to whether increased property taxes due to the construction of the project are sufficient to support needed local improvements and public services required to serve the project.*

SEC. 5. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d) (1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission

pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission may not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant prior to the commission's licensing of the project, to the extent that the proposed facility requires emission offsets to comply with local, regional, state, or federal air quality standards.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(g) In the case of a facility, other than a resource recovery facility subject to subdivision (f), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

(h) *A discussion of any public benefits from the project including, but not limited to, economic benefits, environmental benefits, and electricity reliability benefits, resulting from modernization of the state's electric generation infrastructure.*

SEC. 6. Section 25526.1 is added to the Public Resources Code, to read:

25526.1. The commission shall adopt a regulation, applicable to any adjudicatory proceeding before the commission, governing ex parte contacts. The regulation shall provide for prompt disclosure of any ex parte contact. The rule shall apply to any contact regarding a substantive, nonprocedural matter at issue in the adjudicatory proceeding between any party to the proceeding and commission staff, and any commissioner, commissioner's advisor, or hearing officer. The regulation shall not restrict exchanges of information among the public and any parties to the proceeding, including contacts between parties and commission staff, other than a commissioner, commissioner's advisor, or hearing officer. The commission staff shall docket a written summary of the substance of any ex parte contact between staff and a party.

SEC. 7. Section 25531 of the Public Resources Code is amended to read:

25531. (a) The decisions of the commission on any application of any electric utility for certification of a site and related facility are subject to judicial review ~~in the same manner as the decisions of the Public Utilities Commission on the application for a Certificate of Public Convenience and Necessity for the same site and related facility by the Supreme Court of California.~~

(b) No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions of the commission, no court in this state has jurisdiction to hear or determine any case or controversy concerning any matter which was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal powerplant except to enforce compliance with the provisions of a decision of the commission.

(d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

(1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a condition of certification of any site and related facility, that the applicant acquire development rights, that requirement conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought by the applicant to acquire the development rights.

(2) If the commission certifies any site and related facility, that certification conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought to acquire the site and related facility.

(e) No decision of the commission pursuant to Section 25516, 25522, or 25523 shall be found to mandate a specific supply plan for any utility as prohibited by Section 25323.

SEC. 8. Section 25544 is added to the Public Resources Code, to read:

25544. Notwithstanding any other provision of law, no owner of a facility shall have standing to challenge a decision made by the commission pursuant to this chapter unless that owner also owns transmission or fueling facilities adjacent to the facility.

SEC. 9. Section 25550.5 is added to the Public Resources Code, to read:

25550.5. (a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final certification for the repowering of a thermal powerplant and related facilities within 180 days after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system, that the project will comply with

1 all applicable standards, ordinances, regulations, or statutes, and
2 that electrical output from the project will be made available to
3 serve electrical customers located within the state. For purposes of
4 this section, filing has the same meaning as in Section 25522.

5 (b) The repowering of a thermal powerplant and related
6 facilities reviewed under this process shall satisfy the requirements
7 of Section 25520 and other necessary information required by the
8 commission by regulation, including the information required for
9 permitting by each local, state, and regional agency that would
10 have jurisdiction over the proposed repowering of a thermal
11 powerplant and related facilities but for the exclusive jurisdiction
12 of the commission and the information required for permitting by
13 each federal agency that has jurisdiction over the proposed
14 repowering of a thermal powerplant and related facilities.

15 (c) After acceptance of an application under this section, the
16 commission shall not be required to issue a six-month final
17 decision on the application if it determines there is substantial
18 evidence in the record that the thermal powerplant and related
19 facilities may result in a significant adverse impact on the
20 environment or electrical system or does not comply with an
21 applicable standard, ordinance, regulation, or statute. Under this
22 circumstance, the commission shall make its decision in
23 accordance with subdivision (a) of Section 25522 and Section
24 25540.6, and a new application shall not be required.

25 (d) For an application that the commission accepts under this
26 section, any local, regional, or state agency that would have had
27 jurisdiction over the proposed thermal powerplant and related
28 facilities, but for the exclusive jurisdiction of the commission,
29 shall provide its final comments, determinations, or opinions
30 within 100 days after the filing of the application. The regional
31 water quality control board, as established pursuant to Chapter 4
32 (commencing with Section 13200) of Division 7 of the Water
33 Code, shall retain jurisdiction over any applicable water quality
34 standard that is incorporated into any final certification issued
35 pursuant to this chapter.

36 (e) The repowering of a thermal powerplant and related
37 facilities that demonstrate superior environmental or efficiency
38 performance improvement shall receive first priority in review by
39 the commission.

(f) With respect to the repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) This section shall not apply to an application filed with the commission on or before August 1, 1999.

(i) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(j) For purposes of this section, ‘repowering’ means a project for the modification of an existing thermal powerplant that meets all of the following criteria:

(1) The project complies with all applicable requirements of federal, state, and local laws.

(2) The project is located on the site of, and within the existing boundaries of, an existing thermal facility.

(3) The project will not require significant additional electrical or fuel-related transmission facilities.

(4) The project will result in significant and substantial increases in the efficiency of the production of electricity, including, but not limited to, reducing the heat rate, reducing the use of natural gas, reducing the use and discharge of water, and reducing air pollutants emitted by the project.

(k) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 10. Section 25552 of the Public Resources Code is amended to read:

25552. (a) The commission shall implement a procedure, consistent with Division 13 (commencing with Section 21000) and with the federal Clean Air Act (42 ~~U.S.C.A.~~ *U.S.C.* Sec. 7401 et seq.), for an expedited decision on simple cycle thermal powerplants and related facilities that can be put into service on or before August 1, ~~2001~~ 2002, including a procedure for considering amendments to a pending application if the amendments specify a change from a combined cycle thermal powerplant and related facilities to a simple cycle thermal powerplant and related facilities.

(b) The procedure shall include all of the following:

(1) A requirement that, within ~~15~~ 30 days of receiving the application or amendment to a pending application, the commission shall determine whether the application is complete.

(2) A requirement that, within ~~25~~ 30 days of determining that an application is complete, the commission, *or a committee of the commission*, shall determine whether the application qualifies for an expedited decision pursuant to this section. If an application qualifies for an expedited decision pursuant to this section, the commission shall provide the notice required by Section 21092.

(c) The commission shall issue its final decision on an application, including an amendment to a pending application, within four months from the date on which it deems the application or amendment complete, or at any later time mutually agreed upon by the commission and the applicant, provided that the thermal powerplant and related facilities remain likely to be in service before or during August ~~2001~~ 2002.

(d) The commission shall issue a decision granting a license to a simple cycle thermal powerplant and related facilities pursuant to this section if the commission finds all of the following:

(1) The thermal powerplant is not a major stationary source or a modification to a major stationary source, as defined by the federal Clean Air Act, and will be equipped with best available control technology, in consultation with the appropriate air pollution control district or air quality management district and the State Air Resources Board.

(2) The thermal powerplant and related facilities will not have a significant adverse effect on the environment *or the electrical system* as a result of construction or operation.

(3) With respect to a project for a thermal powerplant and related facilities reviewed under the process established by this section, the applicant has ~~a contract with a general contractor and~~ ~~has~~ contracted for an adequate supply of skilled labor to construct, operate, and maintain the thermal powerplant.

(e) In order to qualify for the procedure established by this section, an application ~~or an amendment to a pending application~~ shall ~~be complete by October 31, 2000,~~ satisfy the requirements of Section 25523, and include a description of the proposed conditions of certification that will do all of the following:

(1) Assure that the thermal powerplant and related facilities will not have a significant adverse effect on the environment as a result of construction or operation.

(2) Assure protection of public health and safety.

(3) Result in compliance with all applicable federal, state, and local laws, ordinances, and standards.

(4) A reasonable demonstration that the thermal powerplant and related facilities, if licensed on the expedited schedule provided by this section, will be in service before August 1, ~~2001~~ 2002.

(5) A binding and enforceable agreement with the commission, that demonstrates either of the following:

(A) That the thermal powerplant will cease to operate and the permit will terminate within three years.

(B) That the thermal powerplant will be *recertified*, modified, replaced, or removed within a period of three years with a *cogeneration or* combined-cycle thermal powerplant that uses best available control technology and obtains necessary offsets, as determined at the time the combined-cycle thermal powerplant is constructed, and that complies with all other applicable laws, ordinances, and standards.

(6) Where applicable, that the thermal powerplant will obtain offsets or, where offsets are unavailable, pay an air emissions mitigation fee to the air pollution control district or air quality management district based upon the actual emissions from the thermal powerplant, to the district for expenditure by the district pursuant to Chapter 9 (commencing with Section 44275) of Part

1 5 of Division 26 of the Health and Safety Code, to mitigate the
2 emissions from the plant. To the extent consistent with federal law
3 and regulation, any offsets required pursuant to this paragraph
4 shall be based upon a 1:1 ratio, unless, after consultation with the
5 applicable air pollution control district or air quality management
6 district, the commission finds that a different ratio should be
7 required.

8 (7) Nothing in this section shall affect the ability of an applicant
9 that receives approval to install simple cycle thermal powerplants
10 and related facilities as an amendment to a pending application to
11 proceed with the original application for a combined cycle thermal
12 powerplant or related facilities.

13 (f) This section shall remain in effect only until January 1,
14 2003, and as of that date is repealed, unless a later enacted statute,
15 that is enacted before January 1, 2003, deletes or extends that date
16 except that the binding commitments in paragraph (5) of
17 subdivision (e) shall remain in effect after that date.

18 SEC. 11. Notwithstanding Section 17610 of the Government
19 Code, if the Commission on State Mandates determines that this
20 act contains costs mandated by the state, reimbursement to local
21 agencies and school districts for those costs shall be made pursuant
22 to Part 7 (commencing with Section 17500) of Division 4 of Title
23 2 of the Government Code. If the statewide cost of the claim for
24 reimbursement does not exceed one million dollars (\$1,000,000),
25 reimbursement shall be made from the State Mandates Claims
26 Fund.

27 SEC. 12. This act is an urgency statute necessary for the
28 immediate preservation of the public peace, health, or safety
29 within the meaning of Article IV of the Constitution and shall go
30 into immediate effect. The facts constituting the necessity are:

31 In order to address the rapid, unforeseen shortage of electric
32 supply and energy available in the state, which endangers the
33 health, welfare, and safety of the people of this state, it is necessary
34 for this act to take effect immediately.

O

